LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAR 7 1969
DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 1126

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MILTON E. GRUSMARK and
NATALIE BASKIN
Attorneys for Petitioners
1674 Meridian Avenue
Miami Beach, Florida 33139

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	5
FEDERAL JURISDICTION	8
ARGUMENT	8
REASONS FOR GRANTING THE WRIT	8
I	8
II	12
CONCLUSION	16
CERTIFICATE OF SERVICE	18

INDEX TO APPENDIX

	Page
Indictment Counts II and III	Appendix A
Judgments and Sentences	Appendix B
Opinion of United States Court of Appeals, Fifth Circuit	Appendix C
Petition for Rehearing	Appendix D
Denial of Petition for Rehearing	Appendix E
Stay of Mandate	Appendix F

TABLE OF AUTHORITIES

	Page
Battaglia v. U. S., 383 F.2d 303 (9th Cir. 1967)	12
Bruton v. U. S., ___ U.S. ___ 20 L.Ed.2d 476	13
Stirone v. U. S., 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960)	9, 11
U. S. v. Critchley, 353 F.2d 358 (3rd Cir. 1965)	9, 11, 14
U. S. v. Kubachi, 237 F.Supp. 638 (1965)	13
U. S. v. Nedley, 255 F.2d 350 (3rd Cir. 1958)	9, 10

OTHER AUTHORITIES

Title 28 U.S.C. Section 1254(1)	2, 3
Rule 19(1)(b) Rules of the Supreme Court of the United States	2, 3
18 U.S.C.A. 1951(a)(b)	3, 8, 9

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. _____

SAM NICK FARINELLA and
WILLIAM JOSEPH DARA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners SAM NICK FARINELLA and WILLIAM JOSEPH DARA pray that a writ of certiorari issue to review the opinion of the United States Court of Appeals, Fifth Circuit, dated January 13, 1969 and the Order denying Petition for Rehearing dated February 6, 1969.

OPINIONS BELOW

The Judgments of the United States District Court for the Southern District of Florida were filed on August 16, 1967. Sentences were entered on August 16, 1967. (App. B)

The decision of the United States Court of Appeals for the Fifth Circuit was entered on January 13, 1969 (App. C). Petition for Rehearing was denied on February 6, 1969. (App. D, E). Motion for Stay of Mandate was granted to and including March 8, 1969. (App. F)

JURISDICTION

The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1254(1).

Jurisdiction is also invoked under Rule 19(1)(b) of the Rules of the Supreme Court of the United States adopted June 12, 1967, effective October 2, 1967, because a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter or has decided a federal question in a way in conflict with applicable decisions of this Court, and has decided an important question of federal law which has not been, but should be, settled by this Court.

QUESTIONS PRESENTED

I

IS THE HOBBS ACT, 18 U.S.C.A. 1951, VIOLATED BY ROBBERY OCCURRING AFTER THE MOVEMENT OF ARTICLES IN COMMERCE HAS TERMINATED?

II

CAN ATTEMPTED EXTORTION AFFECT COMMERCE SUFFICIENTLY TO VIOLATE THE HOBBS ACT?

CONSTITUTIONAL, STATUTORY AND RULES PROVISIONS INVOLVED

Title 28 U.S.C. Section 1254(1)

> "By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;"

Rule 19(1)(b) Rules of Supreme Court of the United States

> "Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

18 U.S.C.A. 1951(a)(b)

> "Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined not more than $10,000 or imprisoned not more than twenty years, or both.

(b) As used in this section—

(1) The term "robbery" means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family, or of anyone in his company at the time of the taking or obtaining.

(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

(3) The term "commerce" means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, Territory, Possession, or the District of Columbia and any point outside thereof; all commerce between

points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction."

STATEMENT OF THE CASE

Defendants FARINELLA and DARA were indicted along with Defendants Anthony Esperti, Ralph Ray Goodman and Charles James Delmonico for violations of 18 U.S.C.A. 1951. Defendants FARINELLA and DARA were charged in five counts. (App. A).

Count I charged a conspiracy among all the Defendants to obstruct commerce by robbery and extortion.

Count II charged Defendants Esperti, FARINELLA and DARA with obstructing commerce by robbery of $2,000 on or about September 13, 1966.

Count III charged Defendants Esperti, FARINELLA and DARA with obstructing commerce by attempted extortion of $25,000 on or about September 13, 1966.

Count IV charged all five Defendants with obstructing commerce on or about September 14, 1966, by robbery of $2,000.

Count V charged all five defendants with obstructing commerce by extortion of $25,000 on or about September 14, 1966.

The Defendants were tried together. The Court ruled that objections by any defense counsel applied for all Defendants. The jury returned verdicts of guilty against

Defendants FARINELLA and DARA on Counts II and III, acquitting them of Counts I, IV and V. The Court entered an adjudication of guilt and ordered presentence investigation. (T. 1112) Defendant FARINELLA received concurrent sentences of 10 years imprisonment. Defendant DARA was sentenced to 7½ years imprisonment by concurrent sentences. Defendants FARINELLA and DARA appealed to the United States Court of Appeals for the Fifth Circuit. The Court affirmed the decision of the lower court (App. C) and denied Petition for Rehearing (App. D, E).

The facts giving rise to this case disclose that Defendants FARINELLA and DARA were found guilty of the charges alleged in Counts II and III of the indictment based on testimony comprising a small portion of the trial.

Jack Maloney and Joe Yeager were sharers of the profits, although not stockholders, of the Red Ball Merchandising Corporation in Hialeah, Florida. Red Ball Merchandising Corporation was a business allegedly engaged in interstate commerce through the sale of closeout merchandise.

According to the Government's witnesses, on September 13, 1966, around 4:00 P.M., Defendants FARINELLA, DARA and Esperti visited the Red Ball Merchandising Corporation. After being received by the receptionist, they proceeded to a back office with Yeager and an employee, Waldorf. Maloney, who asserted that he had been preparing a deposit, joined them shortly thereafter. Waldorf testified that Defendant FARINELLA pointed a gun at him. Maloney testified that